

CHAPTER 13 – Project Related Permits, Licenses, Agreements, Certifications, and Approvals

Table of Contents

| | |
|--|-------------|
| CHAPTER 13 – Project Related Permits, Licenses, Agreements, Certifications, and Approvals | 13-5 |
| ARTICLE 1 Introduction and Definitions..... | 13-5 |
| Reference Information | 13-5 |
| Introduction..... | 13-5 |
| General..... | 13-5 |
| Definitions | 13-6 |
| Laws..... | 13-6 |
| Policy | 13-7 |
| ARTICLE 2 Securing Governmental Consent to Projects | 13-7 |
| Environmental Scoping | 13-7 |
| Intergovernmental Reviews | 13-7 |
| Coordination with the Federal Highway Administration | 13-8 |
| State and Federal Agencies..... | 13-8 |
| Reaching Agreement on Mitigation..... | 13-9 |
| ARTICLE 3 Permits and Approvals | 13-10 |
| State and Regulatory Agency Involvement | 13-10 |
| Local Agency Involvement..... | 13-13 |
| Conditions of Permits and Approvals..... | 13-15 |
| Federal Involvement | 13-16 |
| Categorically Excluded Projects..... | 13-16 |
| Historic Properties and Wetlands | 13-17 |
| Bridges Over Navigable Waters | 13-17 |
| Floodplains | 13-18 |
| ARTICLE 4 Cooperative Agreements and Similar Agreements | 13-19 |
| Purpose | 13-19 |
| Cooperative Agreements | 13-19 |
| Interagency Agreements | 13-20 |
| Highway Improvement Agreements..... | 13-20 |
| No Cooperative Work without Cooperative Agreement | 13-20 |
| References..... | 13-20 |
| ARTICLE 5 Maintenance Agreements | 13-21 |

| | |
|--|-------|
| General..... | 13-21 |
| Timing..... | 13-21 |
| Cost Sharing..... | 13-21 |
| Approval | 13-21 |
| References..... | 13-22 |
| ARTICLE 6 Route Adoptions | 13-22 |
| California Transportation Commission Action | 13-22 |
| Approval | 13-23 |
| References..... | 13-23 |
| ARTICLE 7 Freeway Agreements and Controlled Access Highway Agreements | 13-23 |
| Agreement Required to Close Local Roads..... | 13-23 |
| New Connection Requires Revised Agreement | 13-24 |
| Local Roads to be Relinquished | 13-24 |
| Maintenance Agreements are Separate..... | 13-24 |
| References..... | 13-24 |
| ARTICLE 8 Relinquishments | 13-24 |
| California Transportation Commission Resolution | 13-24 |
| When Relinquishment is Needed..... | 13-25 |
| Agreement or Resolution | 13-25 |
| References..... | 13-25 |
| ARTICLE 9 Disposal of Rights-of-Way | 13-25 |
| Request to Decertify Rights-of-Way | 13-25 |
| References..... | 13-26 |
| ARTICLE 10 Public Road Connections | 13-26 |
| California Transportation Commission Consent | 13-26 |
| New or Modified Interchanges | 13-26 |
| Requires Revising Agreements..... | 13-26 |
| References..... | 13-27 |
| ARTICLE 11 Resolutions of Necessity for Condemnation | 13-27 |
| Property Acquisition..... | 13-27 |
| Condemnation Requires Resolution of Necessity | 13-27 |
| California Transportation Commission Appearance by Property Owner..... | 13-27 |
| Reviews..... | 13-28 |
| References..... | 13-28 |

Table of Figures

| | |
|--|-------|
| Figure 13-1 State and Regulatory Agency Involvement Based on Project Location | 13-11 |
| Figure 13-2 State and Regulatory Agency Involvement Based on Resource Affected by Project | 13-11 |
| Figure 13-3 State and Regulatory Agency Involvement Based on Project Activities..... | 13-12 |
| Figure 13-4 Local Agency Involvement Based on Project Activities Outside the State Right-of-Way | 13-15 |

CHAPTER 13 – Project Related Permits, Licenses, Agreements, Certifications, and Approvals

ARTICLE 1 Introduction and Definitions

Reference Information

Some of the references found in this chapter have hyperlinks that connect to Caltrans intranet pages which are not displayable to the general public. Until such time that the specific reference becomes available on the internet, the user will have to contact their district liaison, Caltrans project manager, or the appropriate Headquarters division to inquire about the availability of the reference.

Introduction

This chapter discusses project development workflow tasks with certain additional requirements. Most of these tasks occur between project initiation and the final environmental document approval date; however, some of the tasks may occur late in the project design phase.

General

Entities other than Caltrans have vested interests in transportation projects, which they protect by requiring mitigation of project effects or by requiring various permits, licenses, agreements, certifications (PLAC), and approvals. Negotiations with other agencies to allow a project to proceed to construction take place during many phases of a project's development; during engineering and environmental studies; the project approval process; and project design. Negotiations usually reach closure with an approval, agreement, or permit at the same time as project approval or shortly thereafter.

Definitions

Information handout – is supplemental project information furnished to bidders as a handout.

Local agency – the entity ultimately responsible for operations, maintenance, and tort liability of the public road connection to a freeway or controlled access highway, usually a city or county.

Laws

The laws presented in this sub-article represent the current version available on the internet at the time of publishing. It is the user's responsibility to verify the correctness and applicability of specific laws.

California Streets and Highways Code Section 83

Section 83 states:

Any public street or highway or portion thereof which is within the boundaries of a state highway, including a traversable highway adopted or designated as a state highway, shall constitute a part of the right of way of such state highway without compensation being paid therefor, and the department shall have jurisdiction thereover and responsibility for the maintenance thereof.

California Streets and Highways Code Section 93

Section 93 states:

The department may construct and maintain detours as may be necessary to facilitate movement of traffic where state highways are closed or obstructed by construction or otherwise. The department may direct traffic onto any other public highway which will serve as a detour, in which case the department, upon the completion of such use, and upon the request of the local agency having jurisdiction over the highway, shall restore the same to its former condition; provided, that the local agency shall reimburse the department for the amount of all betterment to such highway caused by the restoration. The department shall also reimburse the local agency for all reasonable additional expenses incurred by that agency in maintaining said highway during the period of detour if such additional expenses were caused by said detour.

Policy

The project development team determines who is responsible for obtaining the required permits unless the district already established responsibilities for this. The following chapters provide additional information:

- [Chapter 2](#) – Roles and Responsibilities
- [Chapter 16](#) – Cooperative Agreements
- [Chapter 23](#) – Route Adoptions
- [Chapter 24](#) – Freeway Agreements
- [Chapter 25](#) – Relinquishments
- [Chapter 26](#) – Disposal of Rights-of-Way for Public or Private Road Connections
- [Chapter 27](#) – Access Control Modification
- [Chapter 28](#) – Resolutions of Necessity

ARTICLE 2 Securing Governmental Consent to Projects

Environmental Scoping

Contacts, consultations, and coordination with other agencies are required for compliance with environmental law. Special attention must be given to the scoping process for preparation of the draft environmental impact statement. The [*Standard Environmental Reference \(SER\)*](#) elaborates on involving appropriate agencies in Volume 1, Chapter 32.

Intergovernmental Reviews

Caltrans is obligated to cooperate with other agencies on proposed development projects and other governmental actions that may impact State highways. The *California Environmental Quality Act of 1970 (CEQA)* and the *National Environmental Policy Act of 1969 (NEPA)* permit Caltrans to review such projects. Information about the intergovernmental review process is available at the [*Local Development-Intergovernmental Review*](#) website.

Coordination with the Federal Highway Administration

Early and continuous coordination with the Federal Highway Administration (FHWA) on proposed State highway projects is crucial, since most projects are federally funded or require NEPA environmental approval. For specific conditions and circumstances of FHWA involvement, see [Chapter 2](#) – Roles and Responsibilities; [Chapter 12](#) – Project Approvals and Changes to Approved Projects; [Chapter 21](#) – Design Standard Decisions; and [Chapter 27](#) – Access Control Modification; as well as the [*Standard Environmental Reference*](#).

State and Federal Agencies

In addition to directly affected local and regional agencies, the following State and federal agencies should be involved as soon as jurisdictional responsibility becomes evident on some aspect of the project. (This is not an exhaustive list.)

State Agencies

- California Environmental Protection Agency
 - Air Resources Board
 - Appropriate Regional Water Quality Control Board
- California State Transportation Agency
 - California Highway Patrol
- California Natural Resources Agency
 - California Coastal Commission
 - California Department of Conservation
 - California Department of Fish and Wildlife
 - California Department of Parks and Recreation
 - California Department of Parks and Recreation
 - California Office Historic Preservation
 - California State Lands Commission
 - Central Valley Flood Protection Board

Federal Agencies

- U.S. Department of Defense
 - Department of the Army
 - Department of the Army
 - U.S. Army Corps of Engineers
- U.S. Department of Homeland Security
 - United States Coast Guard
- U.S. Department of Housing and Urban Development
- U.S. Department of the Interior
 - Bureau of Land Management
 - Bureau of Reclamation
 - Indian Affairs
 - National Park Service
 - U.S. Fish and Wildlife Service
 - U.S. Geological Survey
- United States Department of Agriculture
 - U.S. Forest Service
 - Natural Resources Conservation Service
- United States Department of Commerce
 - National Oceanic and Atmospheric Administration
 - National Marine Fisheries Service
- United States Department of Transportation
 - Federal Aviation Administration
 - Federal Highway Administration
- United States Environmental Protection Agency

Refer to the [*Standard Environmental Reference*](#) for additional information on involvement of other State and federal agencies.

Reaching Agreement on Mitigation

Caltrans must obtain agreement on project-related features from a number of agencies, such as the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and the U.S. Army Corps of Engineers for biological mitigation. If the proposed mitigation is unusually large, costly, or complex, Caltrans should invite appropriate district staff from the landscape architecture program and construction and maintenance divisions when consulting

with regulatory agencies, in order to achieve an early resolution of design, construction and maintenance concerns.

This cooperative effort occurs from the system planning phase to final acceptance of the mitigation design by regulatory agencies and is described in the [*NEPA/404 Memorandum of Understanding*](#).

After acceptance of the mitigation plan by the regulatory agencies, the project manager must forward a notice of acceptance to the district maintenance division. The notice must include the following:

- Proposed date of construction
- Project location, size of project, location of mitigation site
- Length of monitoring and establishment period
- Anticipated date on which maintenance will begin
- Who will maintain the site
- Special maintenance considerations and directions
- Name of contact person for further information

ARTICLE 3 Permits and Approvals

State and Regulatory Agency Involvement

Transportation projects often need permits and approvals to allow construction and eventual opening to the public. To aid in determining which State and regulatory agency permits and other approvals may be required for a specific project, answer the following questions and refer to Figure 13-1, Figure 13-2, and Figure 13-3. See Figure 13-4 for local agency involvement outside the State right-of-way.

- Where is the project located?
- What resources are affected by the project?
- What specific activities does the project involve?

In addition, the [*Standard Environmental Reference*](#) provides project-specific guidance on determining: 1) which federal agencies' involvement may be required; 2) which federal laws and regulations may need to be complied with; and 3) the appropriate type of environmental document and associated processing.

Figure 13-1 State and Regulatory Agency Involvement Based on Project Location

| If the project is located within “Geographic Area,” then: | | |
|--|---|---|
| Geographic Area | Agency Involved | Permit |
| Can be up to one mile inland, but may vary | Coastal Commission | Coastal development permit |
| Greater San Francisco Bay, first 100-feet inland, but may vary | San Francisco Bay Conservation and Development Commission (BCDC) | Development permit |
| Lake Tahoe watershed | Tahoe Regional Planning Agency (TRPA) and Lahontan Regional Water Quality Control Board | Project permit |
| Central Valley | Central Valley Flood Protection Board and U.S. Army Corps of Engineers | Encroachment permit or U.S. Army Corps of Engineers 208/408 |
| Outside the Central Valley | Local flood control agency and U.S. Army Corps of Engineers | Encroachment permit or U.S. Army Corps of Engineers 208/408 |

Note: This figure is not intended to be all inclusive.

Figure 13-2 State and Regulatory Agency Involvement Based on Resource Affected by Project

| If the project affects “Resource,” then: | | |
|---|--|---|
| Resource | Agencies Involved | Permit/Approval |
| Air | Air pollution control/air quality management district | Authority to construct and permit to operate for activities emitting stationary source pollutants to the atmosphere |
| Fish and wildlife habitat | Department of Fish and Wildlife, National Marine Fisheries Service, and U.S. Fish and Wildlife Service | Lake or streambed alteration agreement for activities in lakes, streams and channels, and crossings |
| Water | State Lands Commission | Land use lease (for encroachments, crossings on tidelands, submerged lands, etcetera) |
| | State Water Resources Control Board (including Central Valley) | National Pollutant Discharge Elimination System permit for storm water discharges to surface water |

| | | |
|-------|--|--|
| Water | Flood Protection Board) and regional water quality control board | Waste discharge requirements for non-storm discharges to surface water or groundwater to the waters of the State |
| | Department of Health Services, Division of Drinking Water and Environmental Management, or local health office | Permit to operate a public water system |

Note: This figure is not intended to be all inclusive.

Figure 13-3 State and Regulatory Agency Involvement Based on Project Activities

| If the project involves “Activity,” then: | | |
|---|--|--|
| Activity | Agencies | Permit/Approval |
| Bridges over navigable waters | U.S. Coast Guard | Bridge permit |
| Conversion of timberland to non-forest uses through timber operations and immediate timberland protection zone rezoning | California Department of Forestry and Fire Protection | Timberland conversion permit |
| Power transmission lines, pipelines and railroad crossings | Public Utilities Commission | Review of plans and approval |
| Solid waste disposal | Department of Resources Recycling and Recovery | Disposal requirements |
| Waste discharge | State Water Resources Control Board; regional water quality control board | Discharge requirements |
| Storing, treating, or disposing of hazardous waste | Department of Toxic Substances Control | Hazardous waste facilities permit |
| | State Water Resources Control Board; regional water quality control board; local agency | Hazardous waste discharge requirements; underground storage of hazardous substances permit |
| Right-of-way across State park land | Department of Parks and Recreation | Right-of-way permit, license, easement, joint agreement, or lease |
| Encroachment on 100-year floodplain, intermittent streams, and desert washes | Federal Emergency Management Agency (involvement via local agency), Department of Fish and | Lake or streambed alteration agreement |

| | | |
|--|--|--|
| | Wildlife, and U.S. Army Corps of Engineers | |
| Encroachment on or across cove, bay, or inlet | Department of Boating and Waterways | Review of plans |
| All activities involving dams or reservoirs | Department of Water Resources, Division of Safety of Dams | Approval of plans |
| Dredging | Department of Fish and Wildlife | Standard or special suction dredging permit |
| | State Lands Commission | Dredging permit |
| Burning | Air pollution control district; California Department of Forestry and Fire Protection; local fire control agency | Burn permit |
| Entering private property to gather information for temporary use | Caltrans district right-of-way unit | Property owner right of entry approval, property owner approval for temporary encroachment |
| Entering surface waters to gather information or construct project | Regional water quality control board | Water quality certification or waiver |

Notes:

This figure is not intended to be all inclusive.

If any of the activities are within the Central Valley Flood Protection Board jurisdiction, an encroachment permit is needed.

Local Agency Involvement

Within State Right-of-Way

Caltrans does not need to obtain local agency permits for work done within State right-of-way, even if the work is on a local street or road. In addition, Caltrans does not have to obtain building permits for work done on State-owned or leased facilities. The *California Streets and Highways Code*, Section 83, states that any public street within the boundaries of a State highway “...shall constitute a part of the right of way of such state highway...” Also, in *Regents of University of California v. City of Santa Monica*, 77 Cal. App. 3d 130, the California Appellate Court added that:

“In the absence of a specific constitutional or statutory requirement, the construction and maintenance of State highway and highway-related facilities are sovereign activities that are not subject to local regulation or permit procedures.”

Outside State Right-of-Way

The local agency permit process is often the vehicle used to review improvements made by Caltrans. Many local agencies do not require Caltrans to obtain a permit. However, in some cases Caltrans is required to obtain permits for work done within local agencies' jurisdictions that are outside Caltrans' right-of-way. Although a local agency is allowed to collect an assessment for inspection and plan checking services, *California Government Code*, Sections 6103.6 and 6103.7, exclude the application of these assessments to a State government. Caltrans does not have to pay fees for permit issuance, inspection services, or plan checking to a local agency for work done in, under, on, or about any local agency roadway.

Detours

Where detours are on local streets but outside of the State's right-of-way, the *California Streets and Highways Code*, Section 93, authorizes Caltrans to operate detours without permits from the local agency.

Easement or Right of Entry

If Caltrans has an easement or right of entry into a local right-of-way, Caltrans may or may not be required to obtain a permit depending on the terms of the easement and/or other conditions. For specific easement information, contact the district right-of-way engineering unit.

Fees

Caltrans pays fees when a statute(s) specifically disallows the State agency exemption from fees imposed by a local agency. See the [*Standard Environmental Reference*](#) for additional information. Examples of these types of fees are:

- Certain fees under the *California Water Code*. See *California Government Code*, Section 6103.1.
- Certain fees under the *California Health and Safety Code*. See *California Government Code*, Section 6103.10.
- Certain fees under the Solid Waste Management Program. See *California Government Code*, Section 6103.11.

On the other hand, fees imposed by a local agency must distinguish between “permit and inspection fees” and “service charges.” While Caltrans is exempt from paying permit and inspection fees, it may not be exempt from paying service charges

imposed by the local agency. “Service charges” are the charges imposed by a local agency when they are requested to provide either materials or produce a project delivery product needed for work on the State Highway System (SHS). For example, charges for water used for construction on a State highway or the preparation of engineering documents for a Caltrans implemented project are service charges. This is different from inspection or permit fees that are charged by the local agency to ensure the permittee complies with the local agency’s standards and requirements.

Figure 13-4 Local Agency Involvement Based on Project Activities Outside the State Right-of-Way

| If the project involves “Activity,” then: | | |
|--|--------------------------|---|
| Activity | Agency | Permit/Approval |
| Surface mining (material borrow sites, etcetera) | Local agency | Surface Mining and Reclamation Act (SMARA) requirements |
| Sewage disposal | County health department | Disposal requirements |
| Grading | Local agency | Review of grading plans |
| Encroachment on or across a local street or highway | Local agency | Review of and comment on project plans |
| Commercial, industrial, and residential development | Local agency | Land use, general plans, specific plan, conditional use, or subdivision |
| 100-year floodplain encroachments | Local agency | National flood insurance program |
| Contractor’s operations and incidentals, i.e., burning, hauling, water hookup for dust control, etcetera | Local agency | Contractor to obtain routine permits and licenses |

Note: This figure is not intended to be all inclusive.

Conditions of Permits and Approvals

The supplemental project information specification and information handout must provide a list of permits as stipulated in the [Ready to List and Construction Contract Award Guide \(RTL Guide\)](#). Caltrans needs permits and approvals to legally proceed with a project. Include permit conditions in the project plans, specifications, and estimate. Examples of permit conditions are:

- Allowable construction period
- Creek diversion systems
- Environmental concerns
- Floodplain water surface elevation before, during, and after construction
- Levee re-construction or any encroachment on or near a levee
- Methods and materials allowed on construction ramps on river banks
- Methods of paint residue recovery during paint removal operations
- Navigational lighting
- Regrading of river beds
- Signs for environmentally sensitive areas
- Silt fencing
- Sound attenuation systems to protect endangered fish during pile driving operations
- Temporary fencing around environmentally sensitive areas
- Temporary fencing for wildlife
- Other physical works that affect the contractor's performance of the contract

Federal Involvement

In addition to the permits and approvals required by State and local agencies and others, various federal agencies may also require permits and approvals. Federal agencies have approval or permit authority over activities on federal lands and certain resources (i.e., air and water quality, wildlife, navigable waters, etcetera) when federal actions are undertaken. Federal laws, regulations, and executive orders may have a bearing on a specific transportation project and require approvals, permits, or communication with federal agencies other than FHWA. See [Chapter 2](#) – Roles and Responsibilities, to determine which federal agencies—due to location, resources affected, or activities—require involvement on a project.

Categorically Excluded Projects

The environmental requirements of the various federal laws, regulations, and executive orders apply to categorically excluded (CE) projects as well as to projects requiring an environmental document. These requirements are fulfilled as part of the environmental document preparation. When a categorical exclusion is prepared, these requirements must not be overlooked. Federal environmental laws, regulations, and executive orders are described in the [Standard Environmental Reference](#).

Historic Properties and Wetlands

Projects, including categorically excluded projects, that require a federal action (funding, permits, etcetera) and potentially affect historic properties or involve wetlands may require earlier than normal public involvement. When properties eligible for the National Register of Historic Places are present or potentially present, a public mailing inviting written comments is required. Similarly, projects involving wetlands require providing an opportunity for early public involvement by publishing a notice in the local newspaper inviting written comments. Refer to the [*Standard Environmental Reference*](#) for public notice requirements relating to potential historic properties and wetlands.

Bridges Over Navigable Waters

Projects that include work on existing bridges over navigable waters or propose new bridges over navigable waters must be reviewed by the U.S. Coast Guard and may need a bridge permit.

The FHWA is responsible for determining which bridges do not need a U.S. Coast Guard bridge permit due to limited navigability of a waterway as outlined in *Title 23 Code of Federal Regulations*, Section 650.805.

The U.S. Coast Guard is responsible for determining whether bridges over navigable waters need a U.S. Coast Guard bridge permit as outlined in *Title 23 Code of Federal Regulations*, Section 650.807.

The U.S. Coast Guard and FHWA have outlined the steps necessary for coordination for bridge planning and permitting in a [*USCG and FHWA Memorandum of Agreement*](#) between the entities.

As provided by *Title 33 Code of Federal Regulations*, Part 114 through Part 118, the U.S. Coast Guard is responsible for the bridge locations and clearances, alteration of unreasonably obstructive bridges, drawbridge operation, and bridge lighting and other signals.

Early coordination with the Eleventh Coast Guard District Bridge Administrator is essential for efficiently moving the project through the permitting process.

Detailed information on the U.S. Coast Guard bridge permitting process along with the Eleventh Coast Guard District contact is located at:

[USCG Bridge Permit Application Process](#) website

[USCG District Contacts](#) website

Floodplains

Consistency with National Flood Insurance Program standards (administered by the Federal Emergency Management Agency) is required by the FHWA for Federal-aid highway actions involving floodplains and regulatory floodways. The FHWA policies and procedures for the location and hydraulic design of highway encroachments on 100-year floodplains are prescribed in *Title 23 Code of Federal Regulations*, Part 650, Subpart A.

Flood system encroachment permit applications outside of the Central Valley should be sent to the local flood control agency for consistency with National Flood Insurance Program standards. Besides coordinating with the local flood control agency, coordination with the U.S. Army Corps of Engineers and the entity that maintains the facility may be necessary. See [Chapter 2](#) – Roles and Responsibilities for more information on coordination with federal agencies.

Projects in the Central Valley fall under the jurisdiction of the Central Valley Flood Protection Board. Any proposed project involving over-water bridges or highways located within the Central Valley must be evaluated for the 200-year standard. The Central Valley Flood Protection Board has additional vertical and lateral clearance requirements besides the 200-year standard (plus freeboard) for projects in the vicinity of levees.

The U.S. Army Corps of Engineers reviews projects which may affect federal facilities based on its own standards and requirements. This is performed in coordination with the Central Valley Flood Protection Board. Not all of the U.S. Army Corps of Engineers facilities fall under the jurisdiction of the Central Valley Flood Protection Board. Coordination with the U.S. Army Corps of Engineers, the local agency, and the entity that maintains the facility may be necessary where the Central Valley Flood Protection Board does not have a role.

Caltrans submits flood system encroachment permit applications to the Central Valley Flood Protection Board for projects crossing, adjacent to, through, or spanning Central Valley Flood Protection Board features, which include walls, levees, improved channels or designated floodways, and regulated streams including tributaries. After an application is deemed complete, a permit is needed. The Central Valley Flood Protection Board will forward the application to the local U.S. Army Corps of Engineers for their review and comment. The U.S. Army Corps of Engineers review may take up to a year when they have to include their headquarters in the review. Information on Central Valley Flood Protection Board permitting, including jurisdiction maps is located at the [Central Valley Flood Protection Board Permitting](#) website.

Additional guidance on the Central Valley Flood Protection Board permitting process related to Caltrans projects is located at the [Caltrans Drainage References](#) website.

ARTICLE 4 Cooperative Agreements and Similar Agreements

Purpose

Some projects are financed jointly by Caltrans and other local or State governmental agencies or private entities. A local or State entity responsible for water delivery, flood control, or storm water drainage may desire to include some of that work with a related highway project. A local agency may desire work on local streets and roads adjoining a State highway project, over and above what is needed for the project, to provide additional landscaping on a State highway or to install a traffic signal that involves legs that are local streets. A local agency may propose to totally or partially fund a State highway improvement. A developer may desire to make some improvements to accommodate a development adjacent to the State highway.

Caltrans must enter into agreements that provide for such cooperation on a project.

Cooperative Agreements

The cooperative agreement is used to outline the responsibilities and obligations of the parties to an agreement, such as funding, roles and responsibilities of each partner, liability, ownership, right-of-way, utilities, maintenance, etcetera. On State highway projects, where a local agency provides all of the funding and staffing for a State highway improvement, there may be several cooperative agreements covering

different stages of the project. For example, preliminary engineering, design, and construction, where Caltrans could either provide project oversight or do some of the work on a reimbursed basis provided budget authority exists.

Interagency Agreements

An interagency agreement is a contract between two State agencies to provide services. This includes contracts with the University of California or a California State University campus. Interagency agreements do not include contracts with campus foundations, the Federal government, local agencies, or other states. State agencies have contract authority to enter into interagency agreements under the authority of the *California Government Code*, Section 11256.

Highway Improvement Agreements

A highway improvement agreement is similar to a cooperative agreement; it is entered into between Caltrans and a private entity or developer. However, Caltrans prefers the local agency sponsor the private developer's project and enter into a cooperative agreement with Caltrans rather than entering into a highway improvement agreement with the private developer. A highway improvement agreement is only used when that is not possible.

No Cooperative Work without Cooperative Agreement

In the absence of an executed cooperative agreement, Caltrans has no legal authority or obligation to incur expenses on any cooperative work, including work on special funded projects beyond that which it is Caltrans' obligation to provide. Execution of a cooperative agreement is required prior to incurring any costs or committing any personnel resources.

References

Refer to [Chapter 16](#) – Cooperative Agreements and to the [Cooperative Agreement Handbook](#) for a discussion of the types of agreements, responsibilities, approvals, formats, procedures, and district obligations. Refer to [Chapter 2](#) – Roles and Responsibilities for a discussion of requirements for special funded projects.

ARTICLE 5 Maintenance Agreements

General

Maintenance agreements specify the responsibility for maintaining facilities constructed on or adjacent to State routes. They also define the financial arrangements for assuming this responsibility. These agreements are between Caltrans and local agencies, never a private company or developer. Occasionally Caltrans enters into maintenance agreements with other State agencies. The types of pre-approved maintenance agreements are:

- Freeway Maintenance Agreement
- Electrical Maintenance Agreement
- Delegated Maintenance Agreement
- Landscape Maintenance Agreement
- Project Specific Maintenance Agreement

Timing

Ideally, maintenance agreements should be executed after PA&ED, but it is essential that they be finalized well before the advertising of a construction contract.

Cost Sharing

Cost sharing provisions of maintenance agreements typically revolve around the type of facility to be maintained. For railroad structures, the district right-of-way railroad coordinator typically negotiates the terms of the maintenance agreement. For electrical facilities (signals and lights) on conventional highways at intersections with local streets or roads, the costs are shared in the same ratio as the number of legs in the intersection under each jurisdiction to the total number of legs. The same concept applies to interchanges involving freeway facilities and local streets and roads, except participation is based on the ratio of the number of legs of the respective agencies to the total number of legs of the interchange facility.

Approval

Approval is needed from the Headquarters Division of Maintenance prior to maintenance agreement execution. The Headquarters Division of Maintenance delegated this authority to the Deputy District Directors, Maintenance. A review by the Headquarters Division of Legal is required if the pre-approved format for

maintenance agreements is not used (see the following Sub-Article “References”). While the responsibility of signing a maintenance agreement is often delegated to a district maintenance engineer, approval cannot occur without cursory review by the maintenance agreements coordinator, Headquarters Division of Maintenance.

References

Detailed information about maintenance agreements is located at the [Maintenance Agreements](#) website.

General information regarding maintenance agreements is located in Volume 1, Chapter 1, Sections 1.16 and 1.20, of the [Maintenance Manual](#).

To examine the cost distributions of electrical maintenance agreements, refer to Volume 1, Chapter K, page K-35 and the figures on pages K-37 through K-39 of the [Maintenance Manual](#).

For information on railroad maintenance agreements, contact Headquarters Division of Right of Way and Land Surveys-Railroads and Utility Relocations.

ARTICLE 6 Route Adoptions

California Transportation Commission Action

Adoption of route locations requires action by the California Transportation Commission (CTC) before a project on the new location can proceed. Route adoptions are needed to:

- Establish the location of an unconstructed route.
- Change the location of an existing route to a new alignment including such conditions as:
 - Relocating a portion of an existing route (such as a curve realignment project) if the existing route is to be relinquished to the local agency.
 - Relocating a highway to a newly constructed route if the superseded route is to be relinquished to the local agency (also known as Bypass).
- Designate an existing local road as a traversable highway.
- Improve an existing highway to current standards when no route adoption exists. (This occurs when a former county road has been added to the State Highway System by the California Legislature.)
- Redesignate a route when an existing route is changed to a new route number.

- Redesignate a portion of a route congruent to an existing route if the existing route is to be relinquished to the local agency.
- Transfer the location of a traversable highway to a different local road (also known as Transfer of Highway Location).
- Convert a conventional highway to a freeway or an expressway. (This is a freeway declaration or a controlled access highway declaration.)
- Temporarily connect a new alignment to an existing highway when construction is staged.

Approval

The CTC's route adoption occurs at a regularly scheduled CTC meeting following a district's request to place the items on the CTC meeting agenda. A route adoption is normally a routine action if there is community support but, if there is considerable controversy, the CTC may schedule and hold a separate public hearing prior to taking any action. When a project requires FHWA's National Environmental Policy Act approval, the appropriate documents are submitted to FHWA following the CTC action. Route adoption of a freeway or expressway requires a subsequent freeway (or controlled access highway) agreement with the affected local agency as discussed in Article 7 "Freeway Agreements and Controlled Access Highway Agreements."

References

[Chapter 23](#) – Route Adoptions, provides circumstances and procedures for CTC route adoption.

ARTICLE 7 Freeway Agreements and Controlled Access Highway Agreements

Agreement Required to Close Local Roads

An agreement between Caltrans and the local jurisdiction authorizing a local street or road closure is required before a city street or county road is closed by the construction of a freeway or expressway project. This is accomplished with either a freeway agreement or a controlled access highway agreement. A controlled access highway is also known as an expressway. A freeway agreement (or controlled access highway agreement) normally covers the entire freeway (or expressway) facility, or a large segment thereof, within the local jurisdiction. A controlled access highway is subject to all of the requirements concerning agreements that pertain to freeways.

New Connection Requires Revised Agreement

CTC consent is required before a local public road is connected to a freeway or expressway, as discussed in Article 10 “Public Road Connections.” If the new public road connection is approved, a new agreement that shows the connection must supersede the existing freeway or controlled access highway agreement.

Local Roads to be Relinquished

Typically, a freeway (or controlled access highway) agreement provides for the relinquishment of local roads improved or constructed as part of a project. The exhibit map should indicate these facilities. The agreement serves as the basis for the subsequent request for CTC relinquishment action following construction, as discussed in Article 8 “Relinquishments.”

Maintenance Agreements are Separate

Freeway (or controlled access highway) agreements are used as the basis to establish maintenance agreements with local agencies. However, freeway agreements are not used as maintenance agreements. Instructions on maintenance agreements are issued by the Headquarters Division of Maintenance.

References

[Chapter 24](#) – Freeway Agreements, discusses freeway and controlled access highway agreement requirements. Also refer to related [Chapter 27](#) – Access Control Modification, [Chapter 25](#) – Relinquishments, and Sections 23.5 and 100.2 of the *California Streets and Highways Code*.

ARTICLE 8 Relinquishments

California Transportation Commission Resolution

The relinquishment of a State highway (or roads and streets built in conjunction with a State highway) to a local agency is accomplished by a CTC resolution. This resolution is requested following construction of a project after work on the facility to be relinquished is completed and the facility is no longer needed for State highway purposes.

The Caltrans district must submit information through the Office of Land Surveys in the Headquarters Division of Right of Way and Land Surveys for the CTC to relinquish to the county or city the portion of a superseded State highway within the county or city. The information is prepared four months in advance of completion of construction to accommodate a 90-day notice period of intention to relinquish. The 90-day notice period would allow the local agency to state reasons and objections to the relinquishment if they wish to protest it. The scope of work and cost of the repair work should be included in the project report and in the project approval of the project to construct the new highway.

When Relinquishment is Needed

Caltrans initiates relinquishment action by the CTC when:

- a route is superseded by relocation.
- a route is deleted from the State Highway System by legislative enactment.
- new construction or improvements to the local road system (collateral facilities) are made by Caltrans in connection with a State highway project.
- nonmotorized transportation facilities, constructed as part of a State highway project, will be owned, operated and maintained by a county or city.

Agreement or Resolution

Relinquishments of collateral facilities are made in accordance with an agreement or resolution by the local agency's governing body. The freeway agreement (or controlled access highway agreement), discussed in Article 7 "Freeway Agreements and Controlled Access Highway Agreements," is often used for this purpose.

References

[Chapter 25](#) – Relinquishments, contains the details of the relinquishment process.

ARTICLE 9 Disposal of Rights-of-Way

Request to Decertify Rights-of-Way

A project may involve the disposal of existing operating rights-of-way. District Directors have the approval authority to decertify and dispose of rights-of-way on operating facilities: this may include land, access rights, or both. The project engineer from the responsible unit prepares the request to decertify right-of-way for the District Director's approval. Since right-of-way information is required, the

project engineer must coordinate the preparation of the request with the district right-of-way unit. The FHWA must approve the disposal of right-of-way for federally funded right-of-way or construction.

References

See [Chapter 26](#) – Disposal of Rights-of-Way for Public or Private Road Connections, for information needed for requests for approval to decertify and dispose of rights-of-way on operating facilities. Also see related material in [Chapter 24](#) – Freeway Agreements and [Chapter 27](#) – Access Control Modification.

ARTICLE 10 Public Road Connections

California Transportation Commission Consent

CTC consent is required prior to providing a new public road connection to a freeway or expressway. This requirement applies after a freeway or expressway is initially constructed. It may also apply to the initial construction, if the connecting road did not exist at the time of the freeway or controlled access highway adoption, or if the connection is not shown on the current freeway or controlled access highway agreement. Some proposals for access openings to expressways are not considered public road connections and may involve the procedures to dispose of operating right-of-way as discussed in Article 9 “Disposal of Rights-of-Way.”

New or Modified Interchanges

The approval of new or modified interchanges is related to CTC approval of new public road connections. Modified interchanges may or may not be considered new public road connections. New or modified interchanges on the Interstate System require FHWA approval; a two-step process to help manage risk and provide flexibility. See [Chapter 27](#) – Access Control Modification.

Requires Revising Agreements

Revision of an existing freeway or controlled access highway agreement is required to show CTC-approved new connections of city streets or county roads or highways and other revised interchanges, as discussed in Article 7 “Freeway Agreements and Controlled Access Highway Agreements.”

References

Procedures relating to new public road connections to freeways and expressways, and for new or modified interchanges, are discussed in [Chapter 27](#) – Access Control Modification. Also see [Chapter 24](#) – Freeway Agreements, for additional information.

ARTICLE 11 Resolutions of Necessity for Condemnation

Property Acquisition

Caltrans strives to acquire property by purchase, rather than by condemnation. Providing sufficient lead time in the project development process for negotiations to take place results in fewer situations where it is necessary to invoke the power of eminent domain to condemn the property. The condemnation process is time-consuming and can delay projects. Eminent domain is normally used as a last resort. Only a small percentage of properties are acquired by the use of the power of eminent domain.

Condemnation Requires Resolution of Necessity

The California Constitution provides that private property may be taken or damaged for public use only when just compensation has first been paid to the owner. Condemnation of private property by the power of eminent domain must follow prescribed rules. When Caltrans and a property owner are unable to reach agreement on acquisition of a needed property, the condemnation process is initiated by the CTC passing a resolution of necessity (RON). The resolution of necessity provides the legal findings necessary for Caltrans to file suit.

California Transportation Commission Appearance by Property Owner

A property owner whose property is under consideration for a resolution of necessity has the right to appear before the CTC to contest the resolution of necessity on grounds related to the need for the project and for acquiring the property, but not on compensation issues. An appearance information sheet is used to inform the CTC of the facts leading to the resolution of necessity appearance and to document the property owner's concerns.

Reviews

In order to fully consider the concerns of property owners who request an appearance before the CTC, Caltrans utilizes a detailed procedure (known as a First Level Review and a Second Level Review) and involves a condemnation review panel to determine whether to proceed with the condemnation.

References

Information on the process used for a resolution of necessity when an appearance is requested is discussed in [Chapter 28](#) – Resolutions of Necessity.